TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 179

HERBERT S. DANIEL, TRUSTEE OF PETERS TRUST COMPANY, BANKRUPT, PETITIONER,

vs.

GUARANTY TRUST COMPANY OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 23, 1931

CERTIORARI GRANTED OCTOBER 19, 1931

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[fol. a] [Captions omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA, OMAHA DIVISION

In Bankruptcy. #4260

In the Matter of Peters Trust Company, Bankrupt

Application and Petition for Reclamation by Guaranty Trust Company—Filed May 15, 1930

Comes now the Guaranty Trust Company, a corporation, and for its petition of reclamation, alleges as follows:

1. That your petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and having its principal place of business in the City of New York and State of New York; that the Peters Trust Company is a banking corporation organized under the laws of the State of Nebraska, with its principal place of business in Omaha, Nebraska.

2. On November 23, 1929, said bankrupt, Peters Trust Company, submitted a report to the Department of Trade & Commerce of the State of Nebraska, showing an insolvent financial condition and a resolution declaring that its capital was impaired and that the corporation was insolvent; that on November 25, 1929, two days later, the Department of Trade & Commerce filed its petition in the above case, asking that it be appointed liquidating agent and that on [fol. 2] November 25, 1929, a decree was signed by the court with the consent of said bankrupt, Peters Trust Company, appointing the Department of Trade & Commerce as liquidating agent as provided in House Roll #249, Chapter #38, of the Session Laws of Nebraska 1929, said decree stating that said Department should be vested with title to all of the assets of said bankrupt, Peters Trust Company.

3. Your petitioner further shows that on or about the 18th day of November 1929, said Peters Trust Company, while insolvent, and knowing full well their insolvency, ordered from the Guaranty Company of New York, certain

bonds which they purchased from said Guaranty Company of New York, said bonds together with the dates shipped, the amount and their registry number, are as follows:

$5,000 Canadian National Ry.; Registry #90772; shipped November 20, 1929.

$8,000 Texas Corporation convertibles 5's, 1944; Registry #791,206; shipped November 21, 1929.

$5,000 New York, Chicago & St. Louis R. R. 6's, 1932; Registry #790,909; shipped November 21, 1929.

$5,000 Canadian National Ry.; Registry #773,005; shipped November 23, 1929.

4. That said bonds, as described above, were sent to the Peters Trust Company in the regular course of the mails, under registered mail, and delivered to and received by said Peters Trust Company approximately two days after the date of shipment, to-wit: November 23 and November 25, 1929. That the bonds shipped on November 20, 1929 and November 21, 1929 were delivered to and received by said Peters Trust Company on the same day the said Peters Trust Company passed the resolution admitting insolvency and the last shipment of said bonds was delivered to and received by said Peters Trust Company after the Department of Trade & Commerce had been appointed liquidating agent by the court.

5. Your petitioner further alleges that the Peters Trust Company never intended to pay for said bonds; that the Peters Trust Company officers knew that they were hopelessly insolvent and were unable to meet their just obligations and debts, and if they did not know it, they should have known it. That the Peters Trust Company has paid nothing of value for said bonds and never intended to do so, and the said — to the Peters Trust Company, is a nullity [fol. 3] and no valid title passed to the Peters Trust Company of said bonds as the said bonds were obtained upon the implied and express representation that Peters Trust Company was solvent, whereas it was hopelessly insolvent and the officers of the Peters Trust Company knew so when they ordered and received said bonds. That neither the Guaranty Company of New York nor the Guaranty Trust Company were aware of the insolvent condition of this said bankrupt, Peters Trust Company.

6. That the agreement and understanding between Peters Trust Company and the Guaranty Company of New York; was that said sale of bonds was to be a cash sale and that the purchase price for said bonds was to be paid to the Guaranty Company of New York by the Peters Trust Company immediately upon receipt of said bonds. That the sale of bonds throughout the entire country between financial houses is always on a cash basis and the prevailing custom and usage is and always has been a sale for immediate cash.

7. Your petitioner relied upon the financial statements of Peters Trust Company as to their financial condition and these statements together with the agreement to pay cash for the bonds induced the Guaranty Company of New York to sell and deliver said bonds at the dates set forth.

8. Your petitioner further alleges that on the dates said bonds were shipped by the Guaranty Company of New York, said Guaranty Company of New York, sold, assigned and set over to your petitioner, Guarantee Trust Company, for a valuable consideration, the accounts against the said Peters Trust Company for said bonds, and your petitioner is now the owner of said bonds.

9. That said bonds are now in the possession of Herbert S. Daniel, Trustee in bankruptcy of said Peters Trust Company, and that no part of said purchase price has been paid by said Peters Trust Company or by said Herbert S. Daniel, trustee in Bankruptcy of said Peters Trust Company, for said bonds. Petitioner claims that title never passed to the Peters Trust Company or to said Herbert S. Daniel, Trustee, but is in the Guaranty Trust Company, your petitioner. That said Herbert S. Daniel, Trustee, is holding these bonds contrary to law and that he should immediately surrender them over to the rightful owner, your petitioner.

10. That before the commencement of this proceeding due demand was made by your petitioner upon the Depart- [fol. 4] ment of Trade & Commerce, as liquidating agent, that it deliver possession of said bonds to your petitioner, but said demand has been refused.

Wherefore your petitioner prays that an order be entered instructing and directing, Herbert S. Daniel, Trustee of said Peters Trust Company, Bankrupt, to deliver to your

petitioner the bonds described above and that your petitioner have such other and further relief as may seem just and proper.

The Guaranty Trust Company, Petitioner, by Baldrige, Dorsey & Baldrige, Its Attorneys.

Duly sworn to by H. Malcolm Baldrige. Jurat omitted in printing.

[File endorsement omitted.]

Filed Apr. 2, 1930, B. H. Dunham, Referee.

IN UNITED STATES DISTRICT COURT

In the Matter of PETERS TRUST COMPANY, Bankrupt

ANSWER OF HERBERT S. DANIEL, TRUSTEE IN BANKRUPTCY—Filed May 15, 1930.

Now comes Herbert S. Daniel, the duly qualified and acting Trustee of the Peters Trust Company, Bankrupt, and for an answer to the application and petition for reclamation by the Guaranty Trust Company of New York, alleges as follows:

1. Denies each and every allegation contained in said application and petition not expressly admitted.

[fol. 5] 2. Alleges that for a long time prior to November 1929, the Peters Trust Company had purchased bonds and securities from the Guaranty Company of New York, and to effect said purchase, would place an order for the said securities either by wire or by mail, and said Guaranty Company of New York, would fill said order, and ship the securities by registered mail to the Peters Trust Company enclosing an itemized statement of the amount due for the purchase price of said securities. Peters Trust Company after receiving the said securities, would then pay for the same by drawing check in favor of the Guaranty Company of New York, and mail it to said Company. Securities were

thus purchased on credit from time to time for Peters Trust Company's own account or to fill orders for its various customers.

3. That on November 18th, 1929, or prior thereto, the Peters Trust Company ordered the securities listed in said application, from the Guaranty Company of New York, and the said securities were sent by registered mail to Peters Trust Company and received by Peters Trust Company as indicated by the following tabulation:

Date mailed	Date received	Security	Purchase price
11-20-29	11-22-29	5,000 Par Canadian Nat'l.....	$4,975.69
11-21-29	11-23-29	5,000 New York, Chicago & St. Louis R. R. Notes	5,033.33
11-21-29	11-25-29	8,000 Texas Corporation 5%.....	8,071.11
11-23-29	11-25-29	5,000 Canadian National 5%.....	4,975.69

Enclosed in each of the above shipments, was a form letter or statement, setting out the total purchase price substantially as follows:

"Peters Trust Company, Omaha, Nebraska:

We send you herewith by registered mail insured, the following securities. Please sign officially and return this form of acknowledgment and oblige.

Yours very truly, Guaranty Company of New York,
by —— ——, Salesman. Office.

[fol. 6] The following was then an itemized statement of the securities, and the purchase price followed by the statement:

"Please remit to Guaranty Company of New York, 120 West Adams St., Chicago, Illinois, Exchange in amount of $— (purchase price filled in in each case), in payment for the enclosed, per above statement."

4. For further answer the trustee alleges that the title to the said securities vested in Peters Trust Company, and denies that there was any agreement or condition that the title to said securities should not vest prior to the payment of the same.

5. The trustee especially denies that Peters Trust Company was guilty of any fraud in ordering the said securities, or in placing the said order did not intend to pay for the

same, or that it made any false or fraudulent representations whatsoever to the Guaranty Company of New York, in connection with the purchase of said securities from it. The trustee admits, however, that the said securities have not been paid for and that the said Guaranty Company of New York, or its assignee, is a creditor of [of] the bankrupt estate for the amount of the said purchase price, provided it files a proper claim therefor.

6. Your trustee further denies that the petitioner is entitled to reclaim the said securities.

7. Your trustee further alleges that the following customers of Peters Trust Company, had placed orders with the Peters Trust Company, for the following securities, and had paid a part or the whole of the purchase price, and that the Peters Trust Company had purchased the said securities from the Guaranty Company of New York for the purpose of filling the said orders, to-wit:

Rex Bixby.....	1,000 par	Canadian National 5% Bonds due 10-1-69.
Byrne Foster.....	3,000 "	" " " " " " " "
Mrs. Anna McGlade...	3,000 "	" " " " " " " "
Florence I. Moore.....	1,000 "	" " " " " " " "
Ellen Nash.....	1,000 "	" " " " " " " "
Rev. M. J. Laure.....	1,000 "	" " " " " " " "
R. C. Peters.....	3,000 par	Texas Corporation 5% Gold Debentures due 10-1-44.

Each of the above mentioned customers have made demand upon your trustee for the above mentioned securities, and are claiming a right to the same on the completion of the purchase price, where the purchase price had not been fully paid. On account of said purchase, each of the said cus- [fol. 7] tomers of Peters Trust Company should be made a party to this proceeding, and directed to set out in writing their claim, if any, on the respective securities.

8. Your trustee further alleges, that the Guaranty Trust Company of New York, the petitioner and applicant herein, has in its possession, on deposit, approximately the sum of $31,224.60 which belongs to the bankrupt estate, and which was accumulated by the Receiver and Trustee of said bankrupt estate since the date it was adjudicated bankrupt. The trustee has made due demand upon the petitioners for delivery of the said money, but the Guaranty Trust Company of New York has refused to deliver the

said funds or any part thereof, and should be required to account for all funds collected by it on behalf of the receiver or trustee of Peters Trust Company, Bankrupt, or the bankrupt estate, and be directed to deliver the same forthwith to Herbert S. Daniel, Trustee.

IX. The trustee further alleges that with full knowledge of all the facts alleged in the applicant's petition, the applicant ratified and confirmed the sale of the said securities by attempting to impress a lien on the funds belonging to the bankrupt estate on deposit with the applicant, and is estopped to now reclaim said securities from the undersigned trustee.

Wherefore your trustee respectfully prays that the petition of the Guaranty Trust Company of New York, for reclamation of the above mentioned securities, be set down for hearing, and notice of said hearing be given to:

Rex Bixby, % Bankers Reserve Life Co., Omaha, Nebr.;
Byrne Foster, Scribner, Nebraska;
Mrs. Anna McGlade, 611 So. Bench St., Galena, Ill.;
Florence I. Moore, % J. P. Moore, 306 Peters Trust Bldg., Omaha, Nebraska;
Ellen Nash, 2217 So. 32nd Ave., Omaha, Nebr.;
Rev. M. J. Laure, Oakland, Nebraska;
R. C. Peters, 2nd Fl. Peters Trust Bldg., Omaha, Nebr.,

and said parties be directed to set forth in writing prior to the date of said hearing, whatever interest they may have or claim in or to the said securities, and that on said hear-
[fol. 8] ing, the petition of the Guaranty Trust Company of New York for reclamation be denied, and the rights of each of the said customers of Peters Trust Company in and to the said securities be determined and adjudicated, and your trustee be directed as to the delivery of the said securities.

The trustee further prays for an order directing the Guaranty Trust Company of New York to account to him for all funds collected or now held by it belonging to the bankrupt estate, and be ordered to deliver the same [for--

with] to your trustee, and for such other relief as to the Court may seem just and equitable.

Dated this 3rd day of April, 1930.

Herbert S. Daniels, Trustee.

Filed Apr. 3, 1930. B. H. Dunham, Referee.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

In Bankruptcy. Case No. —

In the Matter of PETERS TRUST COMPANY, Bankrupt

Voluntary Petition

Transcript of Proceedings upon the Petition for Reclamation by the Guaranty Trust Company of New York, the Answer of the Trustee Thereto, and Claims of Interveners, Anna McGlade, et al.—Filed May 15, 1930

At 501 Securities Building, in the City of Omaha, Douglas County, Nebraska, in said District, Before B. H. Dunham, Referee in Bankruptcy, April 25, 1930

Appearances:

Mr. H. M. Baldrige, Attorney for Petitioner.
Mr. A. F. Mullen, Mr. W. B. Lane, Attorneys for Trustee.
Mr. Herman Aye, Mr. A. E. Royce, Attorneys for Interveners.

MOTION TO STRIKE

Mr. Baldrige: Comes now the Guaranty Trust Company of New York, applicant herein, and moves that there be [fol. 9] stricken from the answer of Herbert S. Daniel, trustee, paragraphs seven and eight, for the reason that this pertains to an entirely separate issue.

Amendment to Answer

Mr. Lane: Before you present that motion, I want to say that I noticed in studying over my answer last night, I had not alleged an election of ratification of the contract which is raised by the other answers. I dictated it over the telephone, and it will be here shortly.

The Referee: Leave to amend the answer by attaching paragraph is granted.

Mr. Lane: It is paragraph nine, which reads as follows: "The trustee further alleges that with full knowledge of all the facts alleged in the applicant's petition, the applicant ratified and confirmed the sale of said securities by attempting to impress a lien on the funds belonging to the bankrupt estate on deposit with the applicant, and is estopped to now reclaim said securities from the undersigned trustee."

Mr. Baldrige (continuing motion): This motion is for the reason as stated, that the paragraphs of the trustee's answer referred to, raise an issue entirely separate and distinct from the issue raised in the petition for reclamation, and the court has no jurisdiction to entertain such separate issue. I would like a definite ruling now on this motion to strike.

Order Overruling Motion to Strike

The Referee: I will overrule the motion.

Mr. Baldrige: We will file a dismissal of this reclamation proceeding. In other words, from the very first our position has been that it has been immaterial whether we keep the money in New York under the collateral pledge agreement, or whether we get the bonds. Now if Mr. Daniel, the trustee, is allowed to come in here and in his answer bring up these different issues, and if these other people are allowed to come in this lawsuit, as far as we are concerned, why we will dismiss the action. Now of course there isn't any counterclaim, this isn't the same as a counterclaim because we are merely asking for the custody of the bonds. Mr. Daniel has no right to come in when we ask for the custody of the bonds, and bring up a new issue.

The Referee: Well, I am not so sure about that.

Mr. Royce: If the Court please, I think it is the equivalent of a counterclaim that has been filed, and if a counterclaim, a man can't dismiss an action because the counterclaim is the claim of others to these bonds.

[fol. 10] Mr. Baldrige: The Guaranty Trust Company by its attorneys aren't interested in this proceeding. We do not believe we are in court, and we are not interested to stay.

The Referee: All right.

Mr. Lane: We will excuse you, and have the order entered.

HERBERT S. DANIEL, called on behalf of trustee, being first duly sworn, testified as follows:

Direct examination.

By Mr. Lane:

Q. Your name is Herbert S. Daniel?

A. Yes, sir.

Q. You are the duly appointed, qualified and acting trustee of Peters Trust Company, bankrupt?

A. Yes, sir.

Q. And were also the receiver of the Peters Trust Company, bankrupt, from the date of your appointment, December 10th, 1929, to the appointment of the trustee on March 17th, 1930?

A. Yes, sir.

Q. And have been in active charge of the affairs of the bankrupt estate, in possession of the assets, since the 24th day of December, 1929?

A. Yes, sir.

Q. And are still in possession?

A. Yes, sir.

Q. Now referring to the matter of the Guaranty Trust Company of New York, I will ask you whether or not you, as representative of the estate of the Peters Trust Company, bankrupt have had some dealings with that company?

A. Yes, sir.

Q. State in general the nature of the transactions between yourself and the Guaranty Trust Company, in a general way.

A. I wired the Guaranty Trust Company to wire me the balance on hand belonging to the Peters Trust Company with that bank. They answered by saying that the information I desired was in the hands of their Omaha attorneys. I called up Baldrige, Dorsey and Baldrige's office, and read them the telegram I sent the Guaranty Trust Company and their reply, and asked for the information.

Q. Did they say in their telegram who their attorneys were, or did you know?

A. I knew their attorneys were Baldrige and Dorsey because they had filed the application before that.

The Referee: The application for reclamation?

The Witness: Yes.

[fol. 11] Q. Had Baldrige and Dorsey also been over to see you in regard to the affairs of the Guaranty Trust Company prior to that time?

A. Baldrige had, several times.

Q. And there was also a man named Curtis, from the Guaranty Trust Company, here prior to that time, and stated that Mr. Baldrige was looking after their affairs?

A. Yes sir.

Q. In response to the request for a statement of the amount on deposit, did you obtain such a statement from Baldrige and Dorsey?

A. Later I wired the Guaranty Trust Company for a copy of the statement of the Peters Trust Company account from the 25th day of November to date, and they wired me back that that statement had been mailed to their Omaha attorneys for transmission to me, and I went over to Baldrige and Dorsey's office the morning they got the statement from the Guaranty Trust Company, and Mr. Dorsey delivered the statement to me.

Q. Showing you now the statement marked Exhibit A, being a statement in two sheets, I will ask you if you can identify that as the statement you received from Mr. Dorsey at that time?

A. Yes.

Q. And that was in response to your request for a statement of the balance and deposits made in the Guaranty Trust Company from November 25th, to date?

A. Yes.

Q. And that shows a balance of——

A. $31,224.60.

Q. Have you since that time drawn a draft on the Guaranty Trust Company for any part of that deposit?

A. Prior to the receipt of this statement, I drew a check on the Guaranty Trust Company in favor of the Omaha National Bank, for this amount.

Q. I mean when you withdrew $7500.

A. Since then, since the receipt of this statement, I drew a check on the Guaranty Trust Company in favor of the Omaha National Bank, transferring that amount of the funds to the Omaha National Bank.

Q. So the balance that you now have to your credit down there would be the $31,224.60 less than $7500 you have since withdrawn?

A. Yes, that is correct.

Q. That check has been duly honored by the Guaranty Trust Company?

A. I understand so.

Q. Now will you state to the court briefly the source of the funds that made up this deposit now in the hands of the Guaranty Trust Company?

[fol. 12] A. It represents payments made by the Prudential Insurance Company for mortgages sent on by the Peters Trust Company. Payments were made by the Prudential Insurance Company and credited to our account in the Guaranty Trust Company since February 13th, 1930.

Q. On November 25th, 1929, from the statements they have sent you, I will ask you whether or not the Guaranty Trust Company set off and disposed of the balance on hand at that time?

A. The balance to the credit of the Peters Trust Company on November 25th, 1929, was applied by the Guaranty Trust Company against an indebtedness owing by the Peters Trust Company to them at that time.

Q. So the moneys that have accumulated, have accumulated entirely since the adjudication in bankruptcy and the appointment of yourself as receiver or trustee?

A. Yes sir.

Q. Does Exhibit A correctly set out the source of the moneys now on deposit at the Guaranty Trust Company?

A. No, it does not show the source.

Q. I will withdraw that question, and make another statement. Referring to Exhibit A, on the first page, in column two, appears the names of the various mortgages followed by the various amounts. I will ask you what those names refer to?

A. Those are the names of the mortgagors on the loans that were sent in to the Prudential Insurance Company, and which were accepted by them, and the moneys in payment for them were paid to the Guaranty Trust Company for the Peters Trust Company.

Q. The items shown under the column "Credits" represent the moneys paid by the Prudential Insurance Company of America to take up the loans just referred to?

A. Yes sir.

Q. And were there any moneys from any other sources deposited in the Guaranty Trust Company since the date of adjudication in bankruptcy except from the loans sold to the Prudential Insurance Company of America?

A. No sir.

Examination by Mr. Mullen:

Q. Mr. Daniel, you understand this whole arrangement between the Peters Trust Company and this claimant, do you, Guaranty Trust Company?

A. Yes sir.

Q. Have any adverse claims been made to you for any of these amounts?

A. No sir.

Q. From your examination of the books and records of the Peters Trust Company, from the correspondence you [fol. 13] have had with the Guaranty Trust Company, or communications with their attorneys, has the Guaranty Trust Company made any claim for any moneys due them for any transactions they had with the Peters Trust Company?

A. No sir.

Q. And all advances that the Prudential Insurance Company had made, I mean all advances the Guaranty Trust Company had made on the mortgages cleared through them for the Prudential Insurance Company, have been fully paid?

A. They were fully paid for on February 13th, 1930.

Q. And the balance that now appears on deposit is the mortgages that have cleared since that time?

A. Yes sir.

Q. With the accrued interest thereon?

A. Yes sir.

Mr. Royce: Do they still have other mortgages down there?

A. No.

J. J. JACKLEY, called on behalf of trustee, being first duly sworn, testified as follows:

Direct examination.

By Mr. Lane:

Q. You may state your name to the reporter?

A. J. J. Jackley.

Q. And were you in the employ of the Peters Trust Company prior to their closing on November 25th?

A. I was.

Q. In what capacity?

A. Bookkeeper.

Q. And had you been so employed for some time?

A. Yes sir.

Q. Approximately how long?

A. Five years.

Q. And as bookkeeper, did you have immediate charge of keeping the records of deposits and credits and transactions of the Peters Trust Company with various parties, including the Guaranty Trust Company of New York?

A. I did.

Q. And did you also have charge of checking the bank accounts and bank statements?

A. I didn't check the bank accounts, but I was very familiar with them.

Q. Did they all go over your desk?

A. They didn't go over my desk, but I have been checking them since and find them correct.

Q. Now referring to the paper which I show you, marked Exhibit B, I will ask you whether or not that is the statement received from the Guaranty Trust Company showing the deposits and charges against the account of the Peters

Trust Company from November 21st down to November 25th?

[fol. 14] A. It is.

Q. And this was received in the regular course of business by the Peters Trust Company and the agents in charge since that time?

A. Yes.

Q. And I will ask you whether you have also been employed by the receiver and trustee of the Peters Trust Company, Herbert S. Daniel.

A. I have.

Q. Have you checked the books and records of the Peters Trust Company to know whether or not there is any indebtedness at this time due from the Peters Trust Company to the Guaranty Trust Company of New York?

A. There is not.

Q. And you have so determined from your examination of the books? A. Yes sir.

Mr. Lane: I think that's all.

(Witness dismissed.)

M. D. Cameron, called on behalf of trustee, being first duly sworn, testified as follows:

Direct examination.

By Mr. Lane:

Q. You may state your name?

A. M. D. Cameron.

Q. What official capacity, connection, did you have with the Peters Trust Company?

A. I was vice president.

Q. And had you so been for some time?

A. Since the organization of the company.

Q. And you were directly connected with the company during the entire month of November, 1929?

A. Yes sir.

Q. I will ask you whether or not you had occasion to be in New York on November 26th, 1929?

A. I was.

Q. And did you call at the office of the Guaranty Trust Company of New York at that time?

A. I did.

Q. And did you talk with any of the officers or men in charge of that organization?

A. I did.

Q. Name one or two.

A. Mr. Curtis, vice president of the Guaranty Trust Company.

Q. At that time did you inform him of the fact that the Peters Trust Company had closed and been taken over by the State?

[fol. 15] A. I did, but they had already been advised.

Q. They had? That was on November 26th?

A. November 26th, in the afternoon.

Q. 1929?

A. Yes sir.

Q. Have you later had correspondence with officers of the Guaranty Trust Company advising them of the fact of the bankruptcy?

A. I have had correspondence, and I also saw Mr. Curtis in our offices a few weeks ago.

Q. You don't recall the exact date of his being here?

A. No, I don't.

Q. That was since the adjudication in bankruptcy?

A. Oh yes.

Q. And you have also seen the attorneys for the Guaranty Trust Company, Baldrige and Dorsey?

A. I have had no occasion to go to see them.

Q. In the office?

A. I have seen them in the office, but I have had no conversation with them.

(Witness dismissed.)

ARTHUR F. MULLEN, called on behalf of trustee, being first duly sworn, testified as follows:

Direct examination.

By Mr. Lane:

Q. Your name is Arthur F. Mullen?

A. Yes sir.

Q. You are a practicing attorney in the State of Nebraska?

A. Yes, sir.

Q. State whether or not you represented the three petitioning creditors of Peters Trust Company, and filed an involuntary petition in bankruptcy in the United States District Court, for the District of Nebraska, Omaha Division, against the Peters Trust Company, on behalf of said creditors?

A. I did, representing three creditors with claims exceeding $500.00, on the 27th day of November, 1929, filed in the United States District Court, District of Nebraska, Omaha Division, an involuntary petition in bankruptcy on behalf of these creditors, and in this suit service was made on the Peters Trust Company, and the matter is still pending.

The Referee: The date of service is not material, is it?

Mr. Lane: Service was made forthwith, wasn't it?

[fol. 16] Mr. Mullen: I don't know what date it was made, but my impression is that service was made that day.

Mr. Royce: That is as I recall it.

Mr. Lane: The subpœna was issued that day, and I think, served the same day. I think that is all. I think that makes the record that we stand on.

The Referee: Now is there anything further bearing upon the claims of people to specific securities here?

Mr. Lane: I think the order should be made directing and authorizing the trustee to deliver the securities mentioned in our answer as being purchased, to the respective purchasers upon the payment of any balance that may be due the bankrupt estate.

Mr. Aye: Right at that point, are there any that haven't paid up in full. As far as I know there may be some others. Laure is one.

The Referee: That applies also as regards possibly Byrne Foster.

Mr. Lane: They have both tendered the money.

The Referee: That is to say they are entitled to the particular securities indicated in the answer of the trustee upon the payment of the balance, if anything, due from them?

Mr. Lane: Correct.

(Examination concluded.)

[File endorsement omitted.]

EXHIBIT A

Peters Trust Co.

Demand Loan Account

	Description of entry		Demand loan Credits	Demand loan Balance
Nov. 25, 1929.			.....	156,700.00
	Lorimer Mtge. paid.....		2,500.00	154,200.00
	Balance applied against loan.....		31,043.53	123,153.47
	Mortgages paid:			
	Bohac, Jr.....	6,000		
	Best	3,000		
	Manz	8,000		
[fo. 17]				
Dec. 2, 1929.	Wells	2,000	72,100.00	51,053.47
	Wiesl	4,500		
	McArdle	2,500		
	Hoffman & Seymour.....	30,000		
	Wenzel	10,000		
	Schaffner, et al.....	2,600		
	Ziegler	3,500		
Dec. 2, 1929.	Interest paid on above Mtges.....		492.36	50,561.11
Jan. 7, 1930.	Mortgages paid:			
	Louis	15,000	21,000.00	29,561.11
	Morrison	4,000		
	Whalen	2,000		
Jan. 7, 1930.	Interest paid on above Mtges.....		213.71	29,347.40
Jan. 23, 1930.	Sila mtge. (6,000) paid.....		6,000.00	23,347.40
Jan. 23, 1930.	Interest paid on above.....		58.75	23,278.65
Feb. 3, 1930.	Mortgages paid:			
	Finnegan	4,600	10,100.00	13,178.65
	Bosse	5,500		
Feb. 3, 1930.	Interest paid on above mtges.....		304.45	12,874.20
Feb. 11, 1930.	Mortgages paid:			
	Burdic	7,000	11,000.00	1,874.20
	Stoural	4,000		
Feb. 11, 1930.	Interest paid on above mtges.....		72.05	1,802.15
Feb. 13, 1930.	Jepson mtge. paid..... 6,500.00			
	146.25 Int.		1,802.15	.....
		6,646.25		
	1,802.15 credited to loan.			
	1,571.90 interest on Demand Loan.		1,571.90	Interest earned on Demand Loan.
	3,374.05			

Excess collateral to loan $3,272.20 against which however there was a charge of $23,055.52 representing a claim transferred from Guaranty Company of New York on November 27, 1929.

Liquidation of Excess Collateral to Loan

(First stated without reference to the claim assigned by Guaranty Company of New York on November 27, 1929.)

	Debits	Credits	Balance	Description of entry
Feb. 13, 1930.	.....	.....	3,272.20	
Mar. 3, 1930.	.....	19,000.00	22,272.20	McNeil Mtge. paid.
Mar. 3, 1930.	.....	354.13	22,626.33	Interest paid on above.
[fol. 18]				
Mar. 4, 1930.	.....	3,500.00	26,126.33	Rush Mtge. paid.
Mar. 4, 1930.	.....	88.34	26,214.67	Interest on above.
Mar. 14, 1930.	.....	5,000.00	31,214.67	Christenson Mtge. paid.
Mar. 14, 1930.	.....	9.93	31,224.60	Interest on above.

Against the above, however, there is a lien on account of claim assigned November 27, 1929, by Guaranty Company of New York of

Principal	23,055.82
Interest on above	385.22
Total Debit	23,441.04
March 14, 1930, Balance due Peters Trust Co.	7,785.56
	31,224.60

In United States District Court

In Bankruptcy. Case No. 4260

In the Matter of Peters Trust Company, Bankrupt

Voluntary Petition

Order of Referee Directing Guaranty Trust Company to Pay Certain Sum to Trustee, etc.—Filed Mar. 15, 1931

At 501 Securities Building, in the City of Omaha, Douglas County, Nebraska, in said District, before B. H. Dunham, Referee in Bankruptcy. April 25th, 1930.

This matter coming on to be heard upon the application of the Guaranty Trust Company for reclamation of the securities therein described, filed herein April 2, 1930, and upon the answer of Herbert S. Daniel, trustee, thereto, filed herein April 3, 1930, and upon the order entered by the undersigned referee April 5, 1930, for notice of the filing of said application of the Guaranty Trust Company, and of the said answer of Herbert S. Daniel, as trustee, thereto, to the following named persons, to-wit:

Rex Bixby, % Bankers Reserve Life Co., Omaha, Nebr.;
Byrne Foster, Scribner, Nebr.;
Mrs. Anna McGlade, 611 So. Bench St., Galena, Ill.;
Florence I. Moore, % J. P. Moore, 306 Peters Trust Bldg., Omaha, Nebr.;
[fol. 19] Ellen Nash, 2217 So. 32nd Ave., Omaha, Nebr.;
Rev. M. J. Laure, Oakland, Nebr.;
R. C. Peters, 2nd Fl. Peters Trust Bldg., Omaha, Nebr.,

which said order ordered and directed the aforenamed persons to set forth in writing whatever interest they, or either of them, many have or claim in and to the aforedescribed securities, and file the same with the undersigned Referee at his office, 501 Securities Building, in the city of Omaha, Nebraska, on or before April 16, 1930, at 9:00 A. M., and notice having been given to each of said persons in accordance with the provisions of the said order of said referee, and in pursuance of the provisions of the Bankruptcy Act, and answers and applications having been filed with said referee by Anna McGlade, R. C. Peters, M. J. Laure, Florence I. Moore and Ellen M. Nash, and the said matter having by order of said referee been set down for hearing on April 23, 1930, at 10:00 A. M., and having on said date at the request of H. M. Baldridge, attorney for the Guaranty Trust Company, been continued to April 25, 1930, at 9:00 A. M., at which time the said matter came on for hearing, the Guaranty Trust Company appearing by H. M. Baldridge, its attorney, the Peters Trust Company, bankrupt, appearing by H. S. Daniel, trustee, and his attorneys, W. B. Lane and Arthur F. Mullen, and Anna McGlade appearing by A. E. Royce, her attorney, and R. C. Peters, M. J. Laure, Florence I. Moore and Ellen M. Nash, appearing by their respective attorneys, Herman Aye and J. P. Moore, and thereupon H. S. Daniel, trustee, by his attorneys, having asked leave of court to amend the answer of H. S. Daniel, trustee, by adding thereto paragraph IX, reading as follows, to-wit:

"The trustee further alleges that with full knowledge of all the facts alleged in the applicant's petition, the applicant ratified and confirmed the sale of the said securities by attempting to impress a lien on the funds belonging to the bankrupt estate on deposit with the applicant, and

is estopped to now reclaim said securities from the undersigned trustee."

which leave was thereupon granted by the court and thereupon the Guaranty Trust Company by its attorney having moved the court to strike from the answer of said Herbert S. Daniel, trustee, paragraphs VII and VIII of said answer, and the said motion to strike having been argued by counsel for the respective parties, and thereupon the court having overruled the said motion to strike, and there- [fol. 20] upon the said Guaranty Trust Company, by its attorney, H. M. Baldridge, having filed its written dismissal of its application for reclamation, this 25th day of April, 1930, and the court having heard argument of counsel thereon, and thereupon the court having dismissed the said application of the Guaranty Trust Company only insofar as said petition or application seeks the reclamation of the securities therein described, and it appearing that Herbert S. Daniel, trustee, in his answer is seeking affirmative relief from the said Guaranty Trust Company of New York, and the issues raised by the pleadings on file should be heard forthwith, and thereupon the matter having come on for hearing upon the pleadings, and the court having heard the evidence and being fully advised in the premises, finds that the respective persons named in paragraph VII of the answer of Herbert S. Daniel, trustee, are entitled to the securities set opposite their respective names, upon the payment of the balance, if anything, due the bankrupt estate from said respective persons, and the court further finds that said trustee has the said securities in his possession and should deliver them to the respective persons named in said paragraph VII of his answer, upon the payment of such sums as may be due from said respective persons to said bankrupt estate, and further finds that the balance of the securities named in the application of the Guaranty Trust Company and of the answer of Herbert S. Daniel, trustee, are the property of the bankrupt estate herein.

And the court further finds that the Guaranty Trust Company has in its hands the sum of $23,724.60 in cash, belonging to Herbert S. Daniel, trustee of the above named bankrupt; that said sum was accumulated by Herbert S. Daniel as receiver subsequent to February 12th, 1930, said

moneys having been collected by said Guaranty Trust Company for and on behalf of said bankrupt estate from the Prudential Insurance Company of America on mortgages made by the bankrupt and sold to the Prudential Insurance Company of America, and that said Guaranty Trust Company has not made herein any claim to the said fund of $23,724.60, and has no claim to the said fund, or to any part thereof, and is merely holding the said sum of $23,724.60 as custodian and agent of Herbert S. Daniel, as trustee of the above named bankrupt, and that said sum should be delivered forthwith to said trustee.

And the court further finds generally that the allegations in the answer of Herbert S. Daniel, trustee, are true. [fol. 21] It Is Therefore Ordered That Herbert S. Daniel, as trustee, be, and he is hereby ordered to deliver to the respective persons named in paragraph VII of said answer, the securities appearing opposite the names of said respective persons, upon the payment by said respective persons to said trustee of any sums which may be due from said respective persons to said bankrupt estate.

And It Is Further Ordered That the Guaranty Trust Company of New York, the applicant herein, be, and it is hereby ordered and directed to forthwith pay over to Herbert S. Daniel, as trustee of the above bankrupt estate, the sum of $23,724.60, of moneys in the hands of said Guaranty Trust Company of New York, belonging to Herbert S. Daniel, trustee of said bankrupt estate, with interest thereon at the rate of 7 per cent per annum from this date.

Witness My Hand This 25th day of April, 1930.

B. H. Dunham, Referee.

Filed Apr. 25, 1930. B. H. Dunham, Referee.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

No. 4260. In Bankruptcy

In the Matter of PETERS TRUST COMPANY, Bankrupt

PETITION OF GUARANTY TRUST COMPANY OF NEW YORK FOR REVIEW OF REFEREE'S ORDER—Filed May 15, 1930

Petitioner, the Guaranty Trust Company of New York, was the claimant of certain bonds in the custody and pos-

session of the trustee in bankruptcy of the above named bankrupt, and, as such, on April 2, 1930, filed with Hon. B. H. Dunham, Referee in Bankruptcy, its petition for the reclamation thereof, to which answer was filed by the said trustee on April 3, 1930, copies whereof are included in the certified transcript of the record of the proceedings before the said referee in said matter hereto attached. On April 25, 1930, a hearing was had and held in said matter before said referee, at the conclusion of which certain findings and orders were made by said referee, the proceedings at said hearing and the said findings and orders being set forth in said certified transcript hereto attached.

[fol. 22] Upon said hearing the petitioner, by its attorney, moved the court to strike from the answer of said trustee, paragraph VIII, of said answer, on the ground that the said referee had no jurisdiction to hear and determine the matters therein alleged, which said motion was by the court overruled, and thereupon the petitioner filed with said referee its written dismissal of its said petition for reclamation, a copy whereof is included in said certified transcript. Notwithstanding the said dismissal, the said referee failed and refused to discontinue and terminate the said hearing, but proceeded to hear and take evidence upon the allegations of paragraph VIII of said answer, wherein the said trustee set forth that the petitioner, the Guaranty Trust Company of New York, had in its possession, on deposit, the sum of $31,224.60, belonging to said bankrupt estate, and should be required to account therefor in said reclamation proceedings.

After filing its said dismissal, the petitioner withdrew from said hearing and participated no further therein.

Upon the said hearing and at the conclusion thereof, the said referee made a final order that the petitioner forthwith pay over to the said trustee the sum of $23,724.60, moneys in its hands, with interest at 7 per cent per annum from the date of said order.

Said order is erroneous in this, that the said petition for reclamation was for the recovery of certain specific personal property, to-wit: the bonds described therein, and no allegations were made or issue raised in said petition relative to any other transactions between the petitioner and the above named bankrupt, or as to any money on deposit with the

petitioner; that the allegations of paragraph VIII of the trustee's said answer attempted to raise an issue with regard to money in the possession of the petitioner, not in the possession of said trustee or in the custody of jurisdiction of the said bankruptcy court, and beyond the scope of the petitioner's said reclamation petition; that, upon the petitioner's said voluntary dismissal of its said reclamation petition, the said referee was without power or jurisdiction to proceed farther with said hearing, or to hear and adjudicate the right of the petitioner with respect to the said money alleged to be in its possession; that by its said motion to strike said paragraph VIII from the said trustee's answer and its subsequent voluntary dismissal, the petitioner manifested its refusal to consent to a hearing or adjudication upon its rights with respect to said money in its possession; no such consent on its part was shown or proved at said hearing, and the said referee was, therefore, without jurisdiction to hear or determine the same; [fol. 23] that the said order of said referee overruling the petitioner's said motion to strike said paragraph VIII of the said trustee's answer was erroneous, and all further proceedings and orders of said referee with respect to the subject matter of said paragraph were without jurisdiction and void.

Wherefore petitioner prays for a review of said proceedings and the order of said referee, and that said order be reversed and set aside.

Guaranty Trust Company of New York, Petitioner for Review, by Baldrige, Dorsey & Baldrige, Attorneys for Petitioner.

Endorsed: Filed May 12, 1930. B. H. Dunham, Referee.

[File endorsement omitted.]

In United States District Court

In Bankruptcy. Case No. 4260

In the Matter of Peters Trust Company, Bankrupt

Voluntary Petition

Referee's Certificate on Review—Filed May 15, 1930

At 501 Securities Building, in the City of Omaha, Douglas County, Nebraska, in said District, Before B. H. Dunham, Referee in Bankruptcy, May 15th, 1930

To the Honorable Joseph W. Woodrough, United States District Judge:

I, B. H. Dunham, Referee in Bankruptcy in charge of this proceeding, do hereby certify that in the course of such proceeding, an order which is hereto attached, was made and entered on the 25th day of April, 1930, ordering the Guaranty Trust Company of New York to forthwith pay over to Herbert S. Daniel, as trustee of the above bankrupt estate, the sum of $23,724.60 of moneys in the hands of said Guaranty Trust Company of New York, belonging to Herbert S. Daniel, trustee of said bankrupt estate, with interest thereon at the rate of 7 per cent per annum from the date of said order. That on May 12, 1930, said Guaranty Trust Company of New York, as petitioner, feeling aggrieved at [fol. 24] said order, filed a petition for a review, which was granted. That the evidence on which said order was based, is hereto attached.

That the sole question upon this review is whether the undersigned Referee had jurisdiction under the facts appearing in the record to enter the said order of April 25, 1930, requiring the Guaranty Trust Company of New York to forthwith pay over to Herbert S. Daniel, as trustee of said bankrupt estate, the said sum of $23,724.60, of moneys in the hands of said Guaranty Trust Company of New York, with interest thereon at 7 per cent per annum from the date of said order.

The petitioner, Guaranty Trust Company of New York in its petition for said review claims that the said order was erroneous for the following reasons:

a. That the petition of said Guaranty Trust Company for reclamation was for the recovery of certain specific personal property, to-wit, the bonds described therein, and no allegations were made or issue raised in the said petition relative to any other transactions between said petitioner and said bankrupt, or as to any money or deposit with the petitioner.

b. That the allegations of paragraph VIII of the trustee's answer to said petition attempted to raise an issue with regard to money in the possession of the petitioner, not in the possession of said trustee, or in the custody or

jurisdiction of said bankruptcy court, and that the said issue was beyond the scope of the petitioner's reclamation petition.

c. That upon the petitioner's voluntary dismissal of its said reclamation petition, said Referee was without power or jurisdiction to proceed further with said hearing, or to hear and adjudicate the rights of the petitioner with respect to the said money alleged to be in its possession.

d. That by the petitioner's motion to strike paragraph VIII of the trustee's answer, and its subsequent voluntary dismissal, the petitioner manifested its refusal to consent to a hearing or adjudication upon its rights with respect to said money in its possession; and no such consent on its part was shown or proved at said hearing, and said Referee was therefore without jurisdiction to hear or determine the same.

e. That the said order of said Referee overruling the petitioner's motion to strike said paragraph VIII of said trustee's answer, was erroneous, and all further proceedings and orders of said Referee with respect to the subject matter of said paragraph were without jurisdiction and void.

[fol. 25] I hand up herewith for the information of the Judge, the following papers:

1. The application or petition of the Guaranty Trust Company of New York, for reclamation, filed herein April 2, 1930.

2. The answer of Herbert S. Daniel, trustee, filed herein April 3, 1930, with the amendment thereto of Paragraph IX, made April 25, 1930.

3. The order entered by the undersigned Referee on April 5, 1930, upon the said application or petition of the Guaranty Trust Company for reclamation, and the answer of Herbert S. Daniel, as trustee, impleading certain parties therein named in the said controversy, and ordering the said application or petition for reclamation, and the said answer of Herbert S. Daniel as trustee, and such of the claims, if any, in writing, as may be made by the parties impleaded, to be set for hearing before said Referee on April 23, 1930, at ten o'clock A. M.

4. The written dismissal of said Guaranty Trust Company of New York of its application or petition for reclamation, which said dismissal was filed April 25, 1930.

5. Transcript of proceedings before said Referee upon the said application or petition for reclamation by the Guaranty Trust Company of New York, the answer of the trustee thereto, and claims of intervenors, Anna McGlade, et al.

6. The Findings of Fact and Order entered by the undersigned Referee on April 25, 1930, wherein said Referee ordered the said Guaranty Trust Company of New York, to forthwith pay over to Herbert S. Daniel as trustee of said bankrupt estate, the sum of $23,724.60, being the order under review upon this review.

7. The petition of the Guaranty Trust Company of New York, for a review of the said order of the Referee of April 25, 1930, which petition for review was filed herein May 12, 1930.

The foregoing is the complete record of all the proceedings had before me upon the application or petition of said Guaranty Trust Company of New York for reclamation, and the answer of Herbert S. Daniel, trustee of said bankrupt estate, thereto, I do not incorporate in the record herein the written answers of the intervenors in said proceeding who intervened pursuant to my order of April 5, 1930, for the reason that said answers would only encumber the record herein, the sole question being only as to the power or jurisdiction of the Referee to enter the order of [fol. 26] April 25, 1930, wherein he ordered and directed said Guaranty Trust Company of New York, to forthwith pay to Herbert S. Daniel, as trustee of said bankrupt estate, the aforementioned sum of $23,724.60, with interest thereon at 7 per cent per annum from the date of said order.

Dated this 15th day of May, 1930.

Respectfully submitted.

B. H. Dunham, Referee in Bankruptcy.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. 4260

In the Matter of PETERS TRUST COMPANY, Bankrupt

Voluntary Petition

ORDER AMENDING ORDER OF REFEREE AND AS AMENDED AFFIRMED—Filed Nov. 21, 1930

This cause came on to be heard on the petition for review of the Guaranty Trust Company of New York to review the order entered by B. H. Dunham, Referee in Bankruptcy, on April 25, 1930, was argued by counsel and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

That the order of B. H. Dunham, Referee in Bankruptcy, dated April 25, 1930, ordering and directing the Guaranty Trust Company of New York to forthwith pay over to Herbert S. Daniel, as Trustee of Peters Trust Company, bankrupt, the sum of $23,724.60, with interest thereon at the rate of 7% per annum from date of said order, *he* modified and amended by the elimination of the direction to pay interest by striking from the said order the words, "with interest thereon at 7% per annum from date" and as thus amended the said order be and hereby is affirmed.

The petitioner, Guaranty Trust Company of New York, duly excepted to this order and an exception is hereby allowed.

It Is Further Ordered that Exhibits A and B referred to in the transcript certified by the Referee (but which the [fol. 27] Referee failed to incorporate in said transcript) should be attached to the said transcript and made a part thereof, the said exhibits being the statements of the account of the Peters Trust Company with the Guaranty Trust Company of New York, furnished by the said Guaranty Trust Company of New York, and the Clerk of this Court is directed to attach the said exhibits to the said transcript and they shall become a part of the said transcript in said proceedings.

By the Court:

J. W. Woodrough, Judge.

[File endorsement omitted.]

In United States Circuit Court of Appeals for the Eighth Circuit

Guaranty Trust Company of New York, a Corporation, Appellant,

vs.

Herbert S. Daniel, Trustee of Peters Trust Company, Bankrupt

Præcipe for Transcript—Filed Dec. 20, 1930

To the Clerk of the District Court of the United States for the District of Nebraska, Omaha Division:

Please prepare transcript for appeal to United States Circuit Court of Appeals for the Eighth Circuit in the above entitled cause and include therein the following:

1. The petition for reclamation filed by Guaranty Trust Company in the matter of Peters Trust Company, bankrupt, in said district court.

2. The answer of the trustee in bankruptcy thereto.

3. The transcript of proceedings had before the referee upon said petition and answer on April 25, 1930, including the motions and remarks of counsel and the testimony taken, as certified by the referee to said district court on petition for review filed by the said [by the said] Guaranty Trust Company.

4. The order of the referee at the conclusion of said proceedings of April 25, 1930.

5. The petition for review on said referee's order filed by said Guaranty Trust Company.

[fol. 28] 6. The questions presented and summary of the evidence certified by said referee to said district court upon said petition for review.

7. The order of said district court entered November 21, 1930, on the hearing of said petition for review.

8. This præcipe and acknowledgment of service thereon.

Guaranty Trust Company of New York, a Corporation, Appellant, by W. C. Dorsey, H. M. Baldrige, Attorneys for Appellant.

Service of copy of this præcipe is hereby acknowledged this 20 day of December, 1930.

Paul L. Martin, Winthrop B. Lane, Attorneys for Herbert S. Daniel, Trustee of Peters Trust Co., Bankrupt.

[File endorsement omitted.]

Clerk's certificate to transcript omitted in printing.

[fol. 29] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

In the Matter of PETERS TRUST COMPANY, Bankrupt

In re Proceedings upon Petition for Reclamation of Guaranty Trust Company of New York

PETITION FOR ALLOWANCE OF APPEAL—Filed Dec. 15, 1930

To the Honorable the Circuit Court of Appeals for the Eighth Circuit:

The petitioner, Guaranty Trust Company of New York, a corporation, respectfully shows unto the court that some time prior to April 25, 1930, it filed in the District Court of the United States for the District of Nebraska, Omaha Division, in the matter of Peters Trust Company, a bankrupt, its petition for reclamation of certain bonds in the possession of the trustee of the estate of said bankrupt, to which the said trustee filed answer, and on April 25, 1930, a hearing was had before the referee in bankruptcy upon said petition and answer, at the conclusion whereof an order was entered by said referee in bankruptcy directing the said Guaranty Trust Company forthwith to pay over to said trustee the sum of $23,724.60.

Thereafter the said Guaranty Trust Company filed its petition in said court for review of the said order, and on November 21, 1930, it was ordered by said court that the said referee's order to pay over said sum to the trustee be affirmed.

The petitioner brings this its petition to be allowed to appeal from said order to this court upon the grounds set forth in the assignment of errors filed herewith.

The petitioner, feeling itself aggrieved by the said order so entered by the United States District Court for the District of Nebraska, hereby appeals from said order and prays that its appeal to this court may be allowed, that a [fol. 30] citation be issued to said trustee as provided by law, and that a duly authenticated transcript of the record, proceedings and papers upon which said order was made and entered be sent to this court.

Guaranty Trust Company of New York, a Corporation, by W. C. Dorsey, H. M. Baldrige, Its Attorneys.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Dec. 15, 1930

Guaranty Trust Company of New York, a corporation, complains that the order of the District Court of the United States for the District of Nebraska made and entered on November 21, 1930, in the above entitled proceedings affirming the order of the referee in bankruptcy entered thereon on April 25, 1930, directing the said Guaranty Trust Company of New York forthwith to pay over to the trustee of the above named bankrupt the sum of $23,724.60, is erroneous for the reasons stated in the following assignment of errors, upon which the said Guaranty Trust Company will rely for the reversal of said order and of the order of the said referee affirmed thereby to-wit:

I

The proceedings in which said referee's order was made were upon a petition for reclamation filed by the said Guaranty Trust Company to recover the possession of certain bonds specifically described therein then in the possession

of the trustee in bankruptcy, and no other issue was raised or relief prayed for. The answer filed by the trustee to said petition, in paragraph VIII thereof, set forth that the said Guaranty Trust Company of New York had in its possession, on deposit, $31,224.60 belonging to the bankrupt estate that it had refused to deliver to the trustee although [fol. 31] demand therefor had been made, and that it should be required to account therefor in said reclamation proceedings. The prayer of said answer was, among other things, that an order be entered directing the said Guaranty Trust Company forthwith to pay over said sum to the said trustee. At the hearing before the referee upon said petition for reclamation, the said Guaranty Trust Company, by its attorney, moved in open court that paragraph VIII of said answer be stricken out, which said motion was overruled. The referee erred in overruling said motion for the reason that the matters and things alleged in said paragraph were not germane to the issue presented by said petition for reclamation and the said referee was without jurisdiction to hear and determine the same.

II

After the motion referred to in the preceding assignment of error had been overruled as aforesaid, the said Guaranty Trust Company, by its attorney, in open court at said hearing filed its written dismissal of its said petition for reclamation and withdrew from further participation in said proceedings. Notwithstanding said dismissal and withdrawal, the said referee proceeded with said hearing upon the matters and things alleged and set forth in paragraph VIII of the trustee's said answer and at the conclusion thereof made and entered the order complained of herein, directing the said Guaranty Trust Company to pay over the sum of $23,724.60 to the said trustee. The said referee was without jurisdiction to proceed with any further hearing based upon said petition for reclamation after the same had been dismissed as aforesaid.

III

Under the facts and circumstances set forth in the two preceding assignments of error, the referee was without jurisdiction to hear or determine the trustee's said claim

to the said sum alleged in paragraph VIII of his said answer to be in the possession of the said Guaranty Trust Company, and his said order relative thereto was erroneous and void, for the reason that said Guaranty Trust Company was, on the face of the record, in possession of said money outside of and beyond the territorial jurisdiction of said bankruptcy court, and was and is an adverse claimant thereof entitled to its day in court in a plenary action in some court having jurisdiction of its person and of the said funds in its possession.

[fol. 32]

IV

Under the facts and circumstances set forth in the preceding assignments of error, the said referee was without jurisdiction to hear and determine the trustee's claim to said money in possession of the said Guaranty Trust Company, and his said order complained of was erroneous and void, for the reason that the said petition *for the reason that the said petition* for reclamation was confined to the specific personal property the possession whereof was claimed therein, and the filing of said petition did not confer jurisdiction upon the said bankruptcy court, in summary proceedings before said referee, to convert the same into an action of accounting for money not in the said trustee's possession or within the territorial jurisdiction of said bankruptcy court.

V

Under the facts and circumstances set forth in the preceding assignments of error, the referee's said order complained of was without jurisdiction, null and void, for the reason that the said Guaranty Trust Company was not amenable to the summary jurisdiction of said bankruptcy court at said hearing so far as the same related to the money in its possession claimed by said trustee, and no consent was ever given by it that said issue should be litigated therein.

VI

The court erred in its order affirming the order of the said referee directing the said Guaranty Trust Company

to pay over said sum of $23,724.60 to the said trustee, for the reason that the referee's said order was without jurisdiction, as more fully set forth in the preceding assignments of error.

Wherefore the said Guaranty Trust Company of New York prays that the order of this court affirming the referee's said order be reversed, with directions to reverse, vacate and set aside the order of said referee entered April 25, 1930.

Guaranty Trust Company of New York, a Corporation, by W. C. Dorsey, H. M. Baldrige, Its Attorneys.

[File endorsement omitted.]

[fols. 33-35] Bond on appeal for $500.00, approved and filed December 18, 1930, omitted in printing.

[fol. 36] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

[Title omitted]

ORDER ALLOWING APPEAL—Dec. 15, 1930

[fol. 37] Now on this 15th day of December, 1930, upon reading the petition of Guaranty Trust Company of New York, a corporation, for the allowance of an appeal to this court, and on consideration of the asignment of errors presented therewith,

It is ordered that an appeal of this cause by the said Guaranty Trust Company of New York to the Circuit Court of Appeals for the Eighth Circuit be, and the same is hereby allowed from the order of the District Court of the United States for the District of Nebraska, Omaha Division, made and entered on November 21, 1930, in the above entitled cause, docketed in said court as Case No. 4260 in Bankruptcy, affirming the order of the Referee in Bankruptcy made and entered on April 25, 1930, therein,

directing the said Guaranty Trust Company of New York to pay over the sum of $23,724.60 to the trustee of said bankrupt estate; that the said Guaranty Trust Company give bond in the sum of $500.00, with sufficient surety, conditioned to prosecute its said appeal to effect, and to answer all costs if it shall fail to make its plea good, said bond to be approved by one of the Judges of this Court, and that a citation to said trustee be issued out of and under the seal of this court according to law.

The allowance of this appeal shall not operate as a stay of the order of the District Court directing the Guaranty Trust Company of New York to pay to the Trustee in Bankruptcy the sum of $23,724.60 and the Trustee may proceed to enforce said decree the same as though this appeal had not been granted.

December 15, 1930.

IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

[Title omitted]

ORDER FOR HEARING OF CASE AT MARCH TERM, 1931—Dec. 15, 1930

[fols. 38 & 39] On the application of counsel for the appellee to advance this cause for hearing at an early date, counsel for the appellant consenting thereto in open Court, It is now here ordered by this Court that this cause be assigned for hearing at the March Term, 1931, of this Court. The briefs of counsel are to be filed in accordance with the provisions of the rules of this Court.

December 15, 1930.

Citation, in usual form, showing service on Winthrop B. Lane, filed December 15, 1930, omitted in printing.

[fol. 40] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

[Title omitted]

STIPULATION TO INCLUDE COPIES OF EXHIBIT B IN COPIES OF PRINTED RECORD—Filed Feb. 14, 1931

It is hereby stipulated by and between the appellant and appellee that, through oversight of the Clerk of the District Court, Exhibit B was omitted from the transcript of the record prepared in the above matter. Under the præcipe for said transcript, Exhibit B should have been included in the said transcript and the omission of the said exhibit has just been discovered by the parties hereto.

It is, therefore, stipulated that the attached photostatic copy of Exhibit B is a true, accurate, and complete copy of the said exhibit and the said Exhibit B shall be included in the printed transcript of the record prepared by the Clerk of this Court and the costs thereof shall be taxed to the appellant.

Baldrige, Dorsey & Baldrige, Attorneys for Appellant. Winthrop B. Lane, Attorney for Appellee.

(Here follows Exhibit "B," side folios 41 and 42)

EXHIBIT "B"

Guaranty Trust Company of New York

140 BROADWAY
NEW YORK

STATEMENT FOR MONTH ENDING NOV 25 1929

PETERS TRUST COMPANY
OMAHA NEBRASKA

KEY
LAT—LIST
CC—CREDIT MEMO
CS—CERTIFIED CHECK
CT—CUSTOMER'S CHECK RETURNED
IN—INTEREST

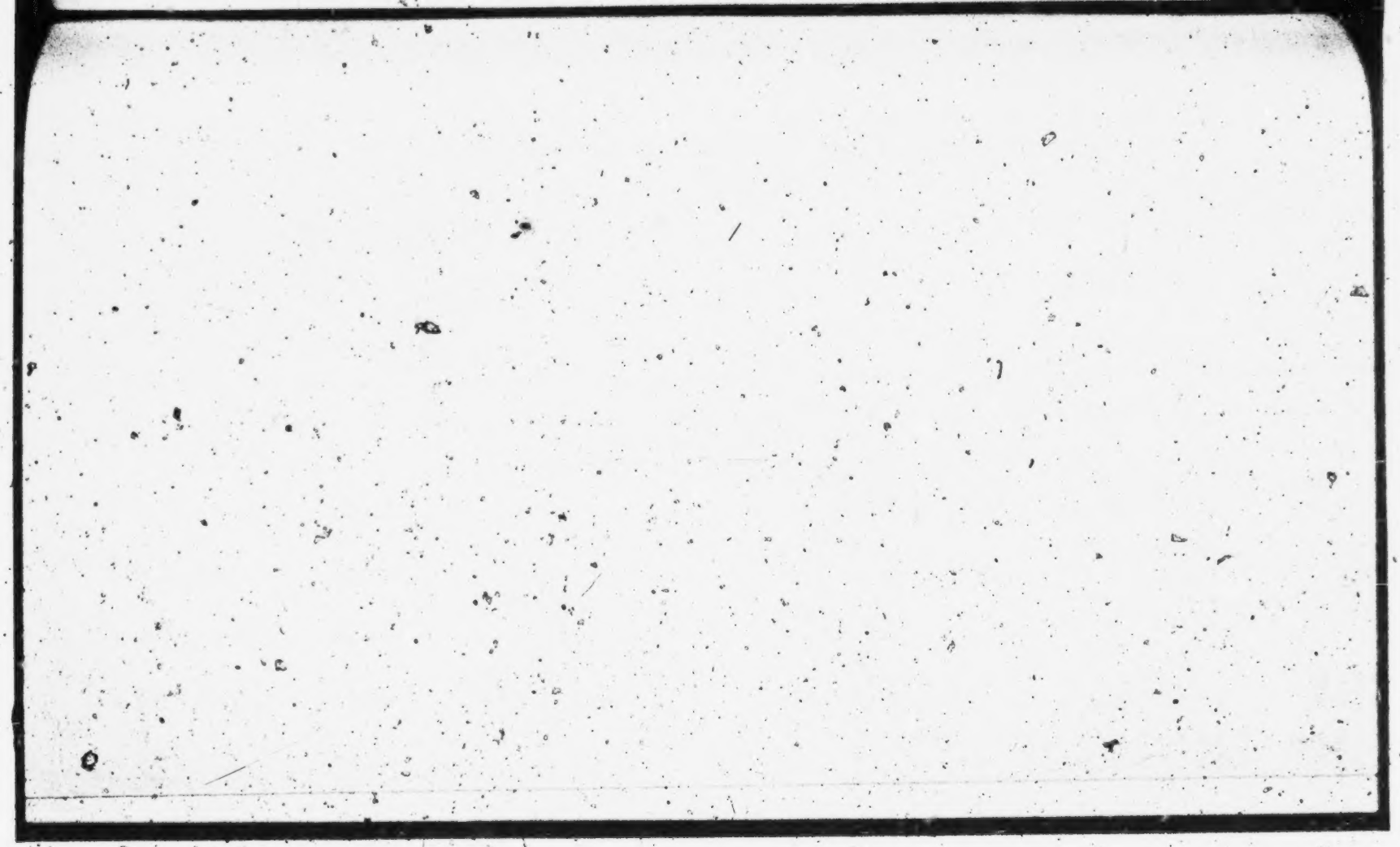
DATE	DEBITS	DATE	CREDITS		DATE	BALANCE
			BALANCE BROUGHT FORWARD		NOV 21	37,788.98
NOV 21 DM	2,616.25	DM	96.85			
NOV 21 DM	780.33	DM	3,861.35		NOV 21	49,562.42
NOV 22	1,560.26		200.00			
NOV 22	300.00		10,000.00		NOV 22	37,302.16
		NOV 22	4,903.70			
		NOV 22	2,446.00		NOV 22	44,851.86
NOV 22 DM	1.24	DM	20,000.00			
NOV 22 DM	951.19	DM	956.25		NOV 22	28,054.85
		NOV 22	5,111.67			
NOV 23	365.63		78.00		NOV 23	24,370.59
NOV 23	3,240.63					
					NOV 23	4,370.59
NOV 23 DM	20,000.00					
		NOV 25	78.33			
		NOV 25	25,861.36			
		NOV 25	2,354.82		NOV 25	33,547.12
NOV 25 DM	.99	DM	.25,000.00			
NOV 25 DM	31,046.35				NOV 25	.00

THIS ACCOUNT IS SUBJECT TO WHATEVER LIENS OR OFFSETS THAT MIGHT BE CHARGED AGAINST IT BY THE GUARANTY TRUST COMPANY OF NEW YORK

LAST BALANCE IN THIS COLUMN IS THE FINAL BALANCE OF THIS SHEET

PLEASE EXAMINE STATEMENT AND VOUCHERS IF NO REPLY BE MADE WITHIN TEN DAYS THE ACCOUNT WILL BE CONSIDERED CORRECT.

36A



[fol. 43] Clerk's certificate to foregoing paper omitted in printing.

[File endorsement omitted.]

[fol. 44] Appearances of counsel omitted in printing.

[fol. 45] Minute entry of argument and submission, March 19, 1931, omitted in printing.

[fol. 46] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT, MAY TERM, A. D. 1931

No. 9088

GUARANTY TRUST COMPANY OF NEW YORK, Appellant,

vs.

HERBERT S. DANIEL, Trustee of Peters Trust Company, Bankrupt, Appellee

Appeal from the District Court of the United States for the District of Nebraska

Mr. William C. Dorsey (Mr. H. Malcolm Baldrige was with him on the brief) for appellant.

Mr. Winthrop B. Lane (Mr. Halleck F. Rose, Mr. Arthur R. Wells and Mr. Paul L. Martin were with him on the brief) for appellee.

Before Van Valkenburgh and Booth, Circuit Judges, and Munger, District Judge

OPINION—Filed May 4, 1931

MUNGER, District Judge, delivered the opinion of the court.

The Peters Trust Company of Omaha, Nebraska, a banking corporation, hereafter called bankrupt, was adjudged insolvent in a proceeding in the state court on November

25, 1929. On November 27, 1929, a petition was filed in the United States Court at Omaha by some of its creditors asking that it be declared a bankrupt and on December 10, [fol. 47] 1929, an adjudication of bankruptcy and order of reference were made on this petition and Herbert S. Daniel was appointed as receiver. The receiver was afterwards chosen as trustee of the bankrupt. In April, 1930, appellant, the Guaranty Trust Company of New York, filed before the referee at Omaha, Nebraska, a petition for reclamation of certain negotiable bonds. In its petition the Guaranty Trust Company alleged that the Guaranty Company of New York had shipped these bonds to the bankrupt on November 20, 21 and 23, 1929, pursuant to an order of the bankrupt and that they were received by the bankrupt on November 23 and November 25, 1929. It alleged that the bankrupt knew of its insolvency when it ordered the bonds, and did not intend to pay for them, that they were fraudulently obtained and that no valid title to them passed to the bankrupt. It was further alleged that the Guaranty Company had assigned to the Guaranty Trust Company the accounts against the bankrupt for the bonds, that the Guaranty Trust Company was the owner of the bonds, and the prayer was for an order by the referee directing the trustee to deliver the bonds to the petitioner, and for such other relief as might be just and proper. The Trustee answered this petition for reclamation, asserting that the sale of the bonds to the bankrupt had been made in the usual course of business, and denied a fraudulent purchase. In addition to these defensive averments, the trustee alleged that the Guaranty Trust Company had in its possession $31,224.60 which belonged to the bankrupt estate, which had been accumulated by the receiver and trustee of the bankrupt after the adjudication, and asked for an order directing the Guaranty Trust Company to pay this amount to the trustee. At a hearing before the referee the Guaranty Trust Company moved that this portion of the answer by the trustee should be stricken out, because it pertained to an issue separate from the one presented by the petition for reclamation, and was an issue not within the jurisdiction of the referee. The referee overruled this motion and thereafter the Guaranty Trust Company announced that it was entering a dismissal of its reclamation proceedings and participated no further in the hearing before the referee. The hearing continued before

the referee and testimony was received from a number of witnesses, and at the conclusion the referee entered an order, which, in part, was as follows:

[fol. 48] "And the court further finds that the Guaranty Trust Company has in its hands the sum of $23,724.60 in cash, belonging to Herbert S. Daniel, trustee of the above named bankrupt; that said sum was accumulated by Herbert S. Daniel, as receiver subsequent to February 12th, 1930, said moneys having been collected by said Guaranty Trust Company for and on behalf of said bankrupt estate from the Prudential Insurance Company of America on mortgages made by the bankrupt and sold to the Prudential Insurance Company of America, and that said Guaranty Trust Company has not made herein any claim to the said fund of $23,724.60, and has no claim to the said fund, or to any part thereof, and is merely holding the said sum of $23,724.60 as custodian and agent of Herbert S. Daniel, as trustee of the above named bankrupt, and that said sum should be delivered forthwith to said trustee.

"And the court further finds generally that the allegations in the answer of Herbert S. Daniel, trustee, are true. * * *

"And it is further ordered that the Guaranty Trust Company of New York, the applicant herein, be, and it is hereby ordered and directed to forthwith pay over to Herbert S. Daniel, as trustee of the above bankrupt estate, the sum of $23,724.60, of moneys in the hands of said Guaranty Trust Company of New York, belonging to Herbert S. Daniel, trustee of said bankrupt estate, with interest thereon at the rate of 7 per cent per annum from this date."

The Guaranty Trust Company filed with the referee a petition for review of this order, and this petition for review was submitted to the court upon the record and the proceedings before the referee. The court affirmed the order, except as to the allowance of interest. The Guaranty Trust Company has appealed from this decision. Its assignments of error allege, in various forms of expression, that the referee was without jurisdiction to make the order complained of, after appellant had dismissed its petition for reclamation. It also alleged that appellant was in possession of the moneys in controversy, and that

it was outside of the territorial jurisdiction of the bankruptcy court. A further claim was made that appellant was an adverse claimant of the money. No complaint was made of the facts found by the referee. Under these find-
[fol. 49] ings, there is no basis for any claim that the appellant was an adverse claimant, both because no such claim was asserted, and because the referee found that the money in question was the bankrupt's and had been received after the bankruptcy proceedings had begun.

There remains the question whether the referee and the court below had the power to order this money to be turned over to the referee. Appellant does not question the authority of a bankruptcy court, through ancillary proceedings in the territorial jurisdiction of appellant's residence, to order the delivery of the bankrupt's assets, but appellant asserts that it was not subject to the order of the referee in this case, although it had filed a petition in reclamation before him. The courts of bankruptcy may act in the exercise of their jurisdiction in their territorial limits, but there may be ancillary bankruptcy proceedings in other districts, in aid of the bankruptcy court exercising primary jurisdiction. Bank. Act, Sec. 2 (20); Babbitt v. Dutcher, 216 U. S. 102; Elkus, Petitioner, 216 U. S. 115; Lazarus v. Prentice, 234 U. S. 263. An order by the referee directing appellant, as a resident of New York, to surrender to the trustee property which it held there, would be beyond the ordinary powers of the referee. Staunton v. Wooden, 179 Fed. 61.

Appellee claims that the referee had jurisdiction to make the order complained of, because a bankruptcy case is a proceeding in equity, and when the appellant filed its petition for reclamation it became subject to Equity Rule No. 30, which provides that the answer, in an equity case, "must state in short and simple form any counter claim arising out of the transaction, and may, without cross bill, set out any set off or counter claim against the plaintiff which might be the subject of an independent suit in equity against him, and such set off or counter claim so set up shall have the same effect as a cross suit, so as to enable the court to pronounce final judgment in the same suit on both the original and cross claims."

It may be conceded that the trustee might have brought an independent suit in equity to recover the amount of money which he alleged the appellant had, belonging to the bankrupt estate. Whitney v. Wenman, 198 U. S. 539. What was the power of the referee to hear and determine such an issue, if the allegations of the answer should be treated under Equity Rule No. 30, as the statement of [fol. 50] a counter claim? In Weidhorn v. Levy, 253 U. S. 268, the court considered the authority of a referee to entertain a suit against a third person seeking to set aside an alleged fraudulent conveyance and to recover for the estate the goods conveyed. After referring to the provisions in the Bankruptcy Act and in the General Orders in Bankruptcy, conferring power upon the referee, the court decided that such a suit was not a "proceeding" in bankruptcy, within the meaning of that term as found in General Order Number XII (1). The court said:

"We find nothing in the provisions of the Bankruptcy Act that makes it necessary or reasonable to extend the authority and jurisdiction of the referee beyond the ordinary administrative proceedings in bankruptcy and such controversial matters as arise therein and are in effect a part thereof, or to extend the authority of the referee under the general reference so as to include jurisdiction over an independent and plenary suit such as the one under consideration. The provisions of the act, as well as the title of his office, indicate that the referee is to exercise powers not equal to or coordinate with those of the court or judge, but subordinate thereto; and he becomes 'the court' only by virtue of the order of reference. In the General Orders the word 'proceedings' occurs frequently, but never in a sense to include a plenary suit. On the other hand, 'proceedings in equity' and 'proceedings at law' are specially dealt with in General Order XXXVII."

See also Remington on Bankruptcy, Secs. 648, 2188, 2194.

We think the reasoning in this case applies also to any plenary suit brought before the referee by the trustee to recover a sum of money alleged to belong to the bankrupt, but the petition of appellant for reclamation and the portion of the trustee's answer which asked for affirmative re-

lief were, in fact, petitions by the parties asking the referee to exercise his summary jurisdiction in proceedings in bankruptcy. The two proceedings were quite distinct. Appellant sought to recover certain bonds to which it claimed title. The trustee sought an order that appellant should pay over money of the bankrupt estate received by appellant, after bankruptcy. The proceedings would not have been more unrelated to each other, if the trustee had sought an order on appellant for the delivery of books and papers such as was asked in Babbitt v. Dutcher, 216 U. S. 102, or [fol. 51] an order for the examination of witnesses such as was asked in Elkus, Petitioner, 216 U. S. 115. We have been cited to no authority for the proposition that a creditor or other petitioner asking specific relief against a bankrupt's estate, as provided by the Bankruptcy Act, thereby becomes subject to summary orders by the referee in matters entirely disconnected from the subject matter of such claim or petition, and no such authority is believed to exist. Under the circumstances we think that the appellant's objections to the jurisdiction should have been sustained and the order of the court affirming the order of the referee will be reversed.

[fol. 52] In United States Circuit Court of Appeals, Eighth Circuit

No. 9088

Guaranty Trust Company of New York, a Corporation, Appellant,

vs.

Herbert S. Daniel, Trustee of Peters Trust Company, Bankrupt

Appeal from the District Court of the United States for the District of Nebraska

Decree—May 4, 1931

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Nebraska, and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court, that the order of the said District Court appealed from in this cause be, and the same is hereby, reversed with costs; and that the Guaranty Trust Company of New York, a Corporation, have and recover against Herbert S. Daniel, Trustee of Peters Trust Company, Bankrupt, the sum of — Dollars for its costs in this behalf expended, to be paid by said Trustee out of any funds in his hands belonging to the said bankrupt estate.

And it is further ordered by this Court that this cause be, and the same is hereby, remanded to the said District Court for proceedings not inconsistent with the opinion of this Court.

[fol. 53] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 54] SUPREME COURT OF THE UNITED STATES.

ORDER ALLOWING CERTIORARI—Filed October 19, 1931

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 35,993. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 179. Herbert S. Daniel, trustee of Peters Trust Company, bankrupt, petitioner, vs. Guaranty Trust Company of New York. Petition for a writ of certiorari and exhibit thereto. Filed June 23, 1931. File No. 35,993.